



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Dennis Rodini for Supervisor 2016  
Attn: Dennis Rodini  
P. O. Box 872  
Point Reyes Station, CA 94956

NOV 03 2017

RE: MUR 7161

Dear Mr. Rodini:

On October 27, 2016, the Federal Election Commission notified Dennis Rodini for Supervisor 2016 of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On October 26, 2017, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe Dennis Rodini for Supervisor 2016 violated 52 U.S.C. § 30103. Also on this date, the Commission exercised its prosecutorial discretion and dismissed the allegation that Dennis Rodini for Supervisor 2016 violated 52 U.S.C. § 30104(c). Accordingly, on October 26, 2017, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Wanda Brown, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff S. Jordan".

Jeff S. Jordan  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Rodoni for Supervisor 2016 MUR 7161

I. INTRODUCTION

This matter was generated by a Complaint alleging that Rodoni for Supervisor 2016 violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by failing to register with the Federal Election Commission (the "Commission") as a political committee and failing to file a report of an independent expenditure to fund a mailing that advocated the election of two federal candidates.<sup>1</sup> The Commission finds no reason to believe that the Committee violated 52 U.S.C. § 30103 by failing to register with the Commission as a political committee, and exercises its prosecutorial discretion to dismiss the allegation that the Committee violated 52 U.S.C. § 30104(c) by failing to file a reporting of independent expenditure related to the mailing.

II. FACTUAL AND LEGAL ANALYSIS

The Complaint alleges that Rodoni for Supervisor 2016 (the "Committee"), campaign committee for Dennis Rodoni, candidate for Marin County, California, Board of Supervisors, failed to register with the Commission as a political committee and failed to file a report of an independent expenditure to fund a mailing that advocated the election of two federal candidates, Hillary Clinton for President and Jared Huffman for U.S. Congress.<sup>2</sup> The mailer encourages recipients to "Vote Your Democratic Team"—Clinton, Huffman, and Rodoni—and contains pictures of each against a rectangular background. In addition, the Complaint alleges that the

<sup>1</sup> Compl. at 1 (Oct. 24, 2016).

<sup>2</sup> *Id.*

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1 mailer, which calls for voters to "Vote your Democratic Team," misleads voters by suggesting  
2 that these federal candidates have supported or endorsed Rodoni and his campaign committee.<sup>3</sup>

3 Dennis Rodoni, on behalf of the Committee, states that his campaign manager consulted  
4 with the Commission's helpline, and the manager determined that Rodoni's campaign did not  
5 need to register as a political committee.<sup>4</sup> Further, Rodoni contends that of the total cost of the  
6 mailer, \$7,051.31, the amount allocable to the two federal candidates fell below the \$250  
7 threshold for independent expenditure reporting.<sup>5</sup> The Committee calculated the allocation based  
8 on the total space in the mailer allocated to each of the federal candidates.<sup>6</sup>

9 The Act and Commission regulations define a "political committee" as "any committee,  
10 club, association or other group of persons which receives contributions aggregating in excess of  
11 \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000  
12 during a calendar year."<sup>7</sup> In *Buckley v. Valeo*,<sup>8</sup> the Supreme Court held that the term "political  
13 committee" "need only encompass organizations that are under the control of a candidate or the  
14 major purpose of which is the nomination or election of a candidate."<sup>9</sup> Accordingly, an  
15 organization that is not controlled by a candidate must register as a political committee only if it

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<sup>3</sup> *Id.* See also Compl. Attach. 1. The mailer includes photos of Clinton, Huffman, and Rodoni in a box titled "Vote Your Democratic Team." The mailer also includes the endorsements of several local office holders and political entities, but does not appear to suggest that Rodoni was expressly endorsed by the pictured federal candidate.

<sup>4</sup> Resp. at 1 (Dec. 19, 2016).

<sup>5</sup> *Id.* See also Resp. Attach. 1 (Analysis by campaign manager of cost of mailer and allocation of costs).

<sup>6</sup> *Id.*

<sup>7</sup> 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5.

<sup>8</sup> 424 U.S. 1 (1976).

<sup>9</sup> *Id.*

1 (1) crosses the \$1,000 threshold; and (2) has as its “major purpose” the nomination or election of  
2 federal candidates.<sup>10</sup>

3 The term “independent expenditure” means an expenditure by a person expressly  
4 advocating the election or defeat of a clearly identified candidate that is not made in concert or  
5 cooperation with or at the request or suggestion of such candidate, the candidate’s authorized  
6 committee, or their agents.<sup>11</sup> The term “clearly identified” means that the name or a photograph  
7 appears, or that the identity of a candidate is apparent by unambiguous reference.<sup>12</sup> Any person  
8 making independent expenditures must file a report with the Commission at the end of the first  
9 reporting period in which independent expenditures with respect to a given election aggregate  
10 more than \$250.<sup>13</sup> Further, an independent expenditure made on behalf of more than one clearly  
11 identified Federal candidate shall be attributed to each candidate according to the benefit  
12 reasonably expected to be derived.<sup>14</sup> In the case of a publication, the attribution shall be  
13 determined by the proportion of space devoted to each candidate as compared to the space  
14 devoted to all candidates.<sup>15</sup>

<sup>10</sup> *Id.* See also 52 U.S.C. § 30103.

<sup>11</sup> 52 U.S.C. § 30101(17).

<sup>12</sup> 52 U.S.C. § 30101(18).

<sup>13</sup> 52 U.S.C. § 30104(c); 11 C.F.R. § 109.10(b).

<sup>14</sup> 11 C.F.R. § 106.1(a). See MUR 6492 (Erie County Ohio Republican Party) (Cost associated with newspaper advertisement allocated based on the space devoted to two federal candidates.). See also Advisory Op. 2006-11 (Washington Democratic State Central Committee) at 3 (Expenditures made on behalf of *more than one* clearly identified candidate “shall be attributed to each such candidate according to the benefit reasonably expected to be derived.” For “publications” (which includes mass mailings), the attribution is determined by “the proportion of space or time devoted to each candidate as compared to the total space or time devoted to all candidates.”).

<sup>15</sup> *Id.*

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1           The only information suggesting the Committee might have crossed the \$1,000  
2 expenditure threshold is the mailer and the documents showing its production costs. Even if the  
3 costs allocable to Clinton and Huffman exceeded \$1,000—which appears unlikely—the  
4 available information indicates that the Committee did not have as a major purpose the  
5 nomination or election of federal candidates. Instead, the Committee is the campaign committee  
6 of a local candidate. Therefore, the Commission finds no reason to believe that Rodoni for  
7 Supervisor 2016 violated 52 U.S.C. § 30103.

8           The Commission also dismisses the independent expenditure reporting allegations.  
9 Whether or not the Committee's mailer costs were allocable or the Committee's estimate of  
10 allocable costs accurately represent the value of any independent expenditures in support of  
11 Clinton and Huffman, it appears that any allocable costs were modest. Therefore, in furtherance  
12 of the Commission's priorities, relative to other matters pending on the Enforcement docket, the  
13 Commission exercises its prosecutorial discretion and dismisses the allegation that the  
14 Committee violated 52 U.S.C. § 30104(c) by failing to disclose the cost of the mailer as an  
15 independent expenditure.<sup>16</sup>

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<sup>16</sup> *Heckler v. Chaney*, 470 U.S. 821 (1985).